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10/011,654	12/04/2001	Marc Degady	WLCO 0156 PUS	8437

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/011,654

Applicant(s)

DEGADY ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 3-8-04
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above claim(s) 1-5 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 6-15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

1. Claims 1-5 stand withdrawn from further consideration pursuant to 37 CFR

1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 8, 2004.

2. Claims 6-8 and 15 are objected to because of the following informalities: In

claims 6 and 8, the reference numerals should be cancelled. In claim 6, step (d), "said coating" should be changed to "the coated". In claim 9, line 4, "to introduce into" should be changed to "in". In claim 10, lines 2 and 3, "used" should be cancelled. In claim 11, "providing" should be changed to "introducing". In claim 12, "are" should be changed to "is". In claim 13: line 14, "of gum material" should be added after "pieces"; line 15, "with" should be changed to "to"; line 23, "at least" should be cancelled; line 32, "piece" should be plural; and line 37, "and" should be changed to "but". In claim 14: line 12, "of gum material" should be added after "pieces"; line 13, "with" should be changed to "to"; line 21, "at least" should be cancelled; line 29, "piece" should be plural; and line 34, "but" should be added after "processes". In claim 15, line 9 "said coating" should be changed to "the coated" and line 17, "and" should be changed to "but". Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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4. Claims 9 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis in claim 8 for: "said ... material" (claim 9, line 3), which can be corrected by making claim 9 dependent upon claim 7; and "the drying air ... member" (claim 11, line 3), which can be corrected by adding "and said second drum member, the drying air introduced into said first drum member being" before "at" (line 2).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's prior art admission (Figures 1-3) in view of Singer et al.

Applicants' admission of prior art (Figures 1-3) illustrates a process for coating chewing gum cores wherein the cores are introduced into an inlet of a rotating drum, a coating material is applied on the cores inside the drum, and the coated cores are dried by injecting air into the drum. The prior art, however, fails to teach the continuous introduction and thus coating of the chewing gum cores through a rotating drum, which involves transporting the cores from the inlet to the outlet of the drum, the circulation of heated air inside the drum, and inclining the drum.

Singer et al (US Patent No. 5,100,683) teaches a method and apparatus for coating and drying a food product by advancing the food product through a rotatable

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drum to agitate and expose the product to a spray-on-coating while simultaneously circulating heated air. The drum is rotatable and permits the circulation of drying air therethrough to yield a uniformly coated, dried product in a single operation. At least one spray station is located in the interior of the sidewall to direct a slurry containing the desired coating substance onto the product as it passes through the rotating drum. A plurality of separate, longitudinally spaced spray zones are defined within the drum, each zone including at least one spray nozzle for directing a spray or coating substance onto the food. The drum is divided into a plurality of separate drying and spraying zones corresponding to perforate and imperforate regions of the drum sidewall. The drum may be inclined to gravity to gradually cause the product to advance from an inlet to an outlet and then discharged (see Figures 1-8; column 1, lines 7-14, and 50- end; and column 2, lines 1-46).

Therefore, because the prior art coating apparatus and the coating apparatus of Singer et al were known art recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the continuous coating apparatus taught by Singer et al for the batch coating apparatus of the prior art. One skilled in the art would appreciate the efficiency of continuously coating and drying of the food products in a single operation wherein the products can be coated with different substances at different zones within the drum and then dried at the corresponding zones following the coating as the food products are tumbled along the length of the rotatable drum to yield uniformly dried coated products.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 6-12 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S.

Patent No. 6,365,203. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to eliminate the second series of coating steps with their function claimed in 6,365,203 if only one coat on the gum core is desired.

9. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states, "Whoever invents or discovers any new and useful process ... may obtain a patent therefor..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

10. Claims 13 and 14 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 5 of prior U.S. Patent No. 6,365,203. This is a double patenting rejection.

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11. The disclosure is objected to because of the following informalities: the status of the parent application is not given on page 1 of the specification.

Appropriate correction is required.

12. Any inquiry concerning this communication from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday--Friday from 10:30 to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.L. Corbin/dh
July 7, 2004



ARTHUR L. CORBIN
PRIMARY EXAMINER

7-14-04